

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

JAMES N. BRASWELL,

Plaintiff,

v.

CIVIL ACTION NO. 2:20-cv-00872

SGT. X MUNCIE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the *Defendants' Motion to Dismiss* (Document 14), *Memorandum of Law in Support of Defendants' Motion to Dismiss* (Document 15), and *Response to Defendants' Motion to Dismiss and Motion to Amend Previously Filed Pro Se Complaint* (Document 24). For the reasons stated herein, the Court finds that the motion to amend should be granted, and the motion to dismiss should be terminated as moot.

The Plaintiff filed his *pro se Complaint* (Document 1) in this matter on December 28, 2020, alleging violations of his constitutional rights in connection with his incarceration at South Central Regional Jail. In particular, the Plaintiff alleged that Defendant Muncie organized and orchestrated an attack on the Plaintiff, wherein Defendant Muncie directed or commanded other inmates to beat the Plaintiff. As a result, the Plaintiff underwent surgeries to remove his spleen and to reconstruct his face. He alleges that, as a result of the attack, he now suffers from PTSD and that additional surgeries are needed to repair his injuries. The Plaintiff further alleges that he was housed insecurely, without proper access to hygiene or restroom facilities. After the incident,

the Plaintiff was denied proper grievance procedures by the Superintendent of the South Central Regional Jail.

By *Standing Order* (Document 3) entered on December 29, 2020, this matter was referred to the Honorable Omar J. Aboulhosen, United States Magistrate Judge, for findings of fact and recommendations for disposition. On March 19, 2021, the Defendants filed a motion to dismiss the complaint. The Plaintiff filed a motion to extend the deadline for filing a response to the motion to dismiss on April 21, 2021. The Magistrate Judge granted the motion and extended the response deadline to June 17, 2021. On that date, the Plaintiff filed an additional motion to extend the response deadline, which the Magistrate Judge granted, extending the response deadline to August 17, 2021.

On August 17, 2021, counsel entered an appearance on behalf of the Plaintiff. As a result, this Court entered an *Order* (Document 26), amending the *Standing Order* (Document 3) to refer the case to the Magistrate Judge for discovery purposes only. That same date, counsel for the Plaintiff filed a response to the Defendants' motion to dismiss and a motion to amend the previously filed *pro se* complaint. The Defendants filed no response to the motion to amend the complaint.

Rule 15(a)(2) of the Federal Rules of Civil Procedure provides that a party may only amend its pleading with the opposing party's written consent or the court's leave if such motion to amend is filed more than 21 days after service of the complaint or service of a responsive pleading or motion pursuant to Rule 12(b). Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.* Given the appearance of counsel on behalf of the Plaintiff, the Court finds that the motion to amend the *pro se* complaint should be granted. Accordingly, the

Defendants' motion to dismiss the *pro se* complaint will be rendered moot by the filing of the amended complaint. Any renewed motion to dismiss the amended complaint may be filed in accordance with Federal Rule of Civil Procedure 15(a)(3).

### CONCLUSION

WHEREFORE, after thorough review and careful consideration, the Court **ORDERS** that the *Motion to Amend Previously Filed Pro Se Complaint* (Document 24) be **GRANTED**, and directs the Clerk to file the Amended Complaint (Document 24-1) accordingly. The Court further **ORDERS** that the *Defendants' Motion to Dismiss* (Document 14) be **TERMINATED AS MOOT**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and to any unrepresented party.

ENTER: September 2, 2021



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA